

## Legal and psychological challenges of prenuptial agreements in Georgia: An analytical overview

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### Abstract

In the modern world, the institution of the prenuptial agreement occupies a significant place in both private law and the system of regulating social relations. The introduction of relevant provisions into the Civil Code of Georgia in 1997 established a legal foundation for the formal regulation of property relations between spouses. Nevertheless, the practical application of this institution remains extremely limited in Georgia. This study combines legal, comparative-legal, and psycho-social analyses and aims to provide a comprehensive assessment of the existing regulations and barriers related to prenuptial agreements in the Georgian context, compared to international practice. Normative and comparative-legal methods were employed in the research. The current regulations of the Civil Code of Georgia were evaluated in terms of their substantive fairness, equality, and protection of the best interests of the child. In parallel, the legal frameworks of Germany, Hungary, and Poland were analyzed to identify elements of European practice that could be adapted to the Georgian legal context. The legal analysis is complemented by an overview of precedents from Courts, as well as the psycho-social significance of the effective functioning of prenuptial agreements. The study concludes that prenuptial agreements in Georgia currently lack both legal clarity and social legitimacy. To ensure the effective functioning of this institution, it is necessary to refine the legislative framework, enhance the explanatory component of the notarial process, and integrate the practice more fully into the Georgian legal system.

**Keywords:** Prenuptial agreement; European Union; European Court of Human Rights

### 1. Introduction

The institution of the prenuptial agreement constitutes a notable advancement within the realm of Georgian private law, having secured a stable position in the national legal system (Shengelia & Shengelia, 2018). The reform of the Civil Code of Georgia in 1997 laid the normative groundwork for the regulation of marital property contracts, thereby significantly expanding the legal flexibility available to spouses in managing their property relations (Javakhishvili, 2016).

Despite the presence of a formal legal framework, the practical implementation of prenuptial agreements in Georgia remains markedly limited and continues to encounter substantial obstacles. This limited application may be attributed to a combination of factors, including the fragmented nature of existing legal norms, socio-economic constraints, and entrenched psychological and cultural biases within society. Such biases often give rise to a negative perception of prenuptial agreements as incompatible with the moral and emotional foundations traditionally ascribed to marriage (Kilian, 2020). In Georgian cultural discourse, the prevailing narrative continues to frame these agreements as

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antithetical to the "sanctity" of marriage, frequently associating them with mistrust and an anticipation of marital dissolution (Luhmann, 1985).

In the current context—characterized by a growing number of property disputes, familial conflicts, and rising divorce rates (Statistical Office of Georgia, 2023)—the prenuptial agreement has the potential to serve as a vital legal instrument that contributes both to the protection of spouses' interests and to the alleviation of pressure on the judicial system (Becker & Boehnke, 2020).

In line with contemporary trends in the development of private law, a functional reassessment of legal instruments governing property relations is imperative. Such reform would simultaneously strengthen individual autonomy and promote family stability based on shared interests (Shengelia & Shengelia, 2018).

This study aims to provide an interdisciplinary evaluation of the legal, psycho-social, and cultural-interpretive challenges associated with the institution of the prenuptial agreement in the Georgian context. It assesses the effectiveness and applicability of existing regulations, identifies barriers to implementation, and situates the Georgian case within a comparative international framework.

To achieve its objectives, the research intends to pursue the following directions:

- **Analysis of the Legislative Framework** – The study will examine the applicable provisions of the Civil Code of Georgia (Articles 1172–1175) governing the formation and operation of prenuptial agreements, in order to assess their compatibility with the constitutional principles of marriage and family protection.
- **Comparative Legal Analysis** – The research will analyze the legal practices of Germany, Hungary, and Poland in terms of property regimes, notarial regulation, and consent standards, aiming to identify adaptable elements of comparative models.
- **Assessment of European Trends** – The study will consider contemporary challenges in European family law, including the integration of substantive fairness principles and the psycho-social interests of the child into marital agreements, thereby expanding the functional horizons of the instrument.

The research will seek to address the following questions:

- To what extent do the provisions of the Civil Code of Georgia (Articles 1172–1175) align with international standards, and what substantive gaps exist within them?
- What is the role of psychological and cultural factors in the relatively low utilization of prenuptial agreements in Georgia?
- How can Georgian legislation benefit from the experiences of the European Court of Human Rights, the Supreme Court of the United Kingdom, the High Court of England and Wales, and international studies in the context of preventing family conflicts and protecting the interests of children?

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## 2. Formation, Modification, Termination, and Annulment of a Prenuptial Agreement

A prenuptial agreement is a civil-law act through which individuals regulate property rights and obligations. The legal force of such a document depends not only on the factor of mutual consent but also on the full legal capacity of the parties involved. According to Article 12 of the Civil Code of Georgia, an individual attains full legal capacity at the age of 18 (Civil Code of Georgia, Article 12).

Legal capacity refers to an individual's ability to fully understand the significance, motivation, and legal consequences of the legal actions they undertake. This principle is especially relevant in cases where one of the parties to the agreement is a person with a disability or someone who has specific psychological or mental health needs.

According to Article 1175 of the Civil Code of Georgia, a person with limited legal capacity may only enter into a prenuptial agreement with the consent of their legal representative. This provision aims to safeguard the interests of the individual while ensuring the legal validity of the contract.

The protection of the rights of persons with disabilities is an international obligation of the state, reflected both in national legislation and various international instruments. Article 22 of Georgia's "Private International Law" outlines the principle that a person's legal status is determined by the law of the country of their nationality. Therefore, in the

case of a mixed-nationality couple, it is necessary to assess the legal capacity of both parties based on the laws of their respective countries (Tumanishvili, 2019).

Under the German Civil Code, the formation of a prenuptial agreement by a person with limited legal capacity is accompanied by additional protective mechanisms: not only is the consent of the legal representative required, but also the approval of the Family Court or the guardianship authority (BGB § 1903, § 1909). This rule serves both to ensure legal protection and to prevent potential cases of abuse.

A prenuptial agreement, as a civil contract, is subject to modification, termination, and annulment. According to legal doctrine, given the nature of the agreement, the parties may mutually agree to amend the terms of the document if there are changes in property status, health condition, or other essential aspects of the relationship.

The Civil Code of Georgia does not explicitly define the procedure for modifying a contract; however, the general civil law principles regarding modification and termination of agreements apply. A unilateral modification is not permitted, as the contract represents a bilateral voluntary act.

Professors Roman and Ekaterine Shengelia note that any modification should be based on a significant reason, and the modification should not place the interests of the parties in an unequal position (Shengelia & Shengelia, 2018). For instance, if a spouse loses their ability to work and the redistribution of property becomes necessary, there may be grounds for revising the agreement through judicial means.

The termination of the agreement occurs when all conditions outlined in the contract are fulfilled, or when the parties mutually agree to cease the agreement. Annulment, on the other hand, occurs in cases where:

The agreement was made under psychological pressure or deceit;

- One of the parties was coerced into agreeing to the terms due to fear of negative consequences;
- The legally required form was violated (e.g., the agreement was not notarized);
- The participating individual was a minor or was recognized as legally incompetent by the court.
- In such cases, the court is authorized to annul the agreement, either in full or in part.

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### 3. Prenuptial Agreement: Legal Foundations and Practical Challenges in Georgia

A prenuptial agreement is a contemporary legal mechanism that provides for the pre-definition of property and, in certain cases, other types of rights and obligations between spouses, either before or after marriage. Despite its potential, this institution remains underutilized and legally insufficiently refined in Georgia (Schulz, 2018).

According to the Civil Code of Georgia, the legal regulation of formal marital relations between spouses is defined by the following provisions:

Article 1172 of the Civil Code of Georgia grants spouses the right to define property rights and obligations both during the marriage and in the event of divorce (Civil Code of Georgia, Article 1172). However, this provision does not cover essential issues such as the upbringing of minor children, custody, regulation of relationships, residence, or the distribution of educational expenses. These matters often become the subject of serious disputes and emotional tensions in practice, which primarily impact the psycho-social well-being of minor children (Shengelia & Shengelia, 2018).

According to Article 1173 of the Civil Code of Georgia, "a prenuptial contract may be made both before and after the registration of the marriage, at any time" (Civil Code of Georgia, Article 1173). This provision creates a general legal framework for entering into a prenuptial agreement; however, the norm lacks sufficient interpretational clarity, particularly regarding the possibility of concluding an agreement before the marriage. The term "intended spouses" is not explicitly mentioned, which raises questions about who may enter into the contract before marriage. To avoid this issue, according to Thompson (2024), it is advisable to clarify the provision and adopt the following revised version: "A prenuptial contract may be made between intended spouses both before and after the registration of the marriage, at any time."

Such a revision would improve the interpretational clarity of the definition, reduce legal ambiguities, and assist both citizens and practicing lawyers in effectively applying the norm. Despite the existence of a legal foundation, the use of

prenuptial agreements remains a rare practice in Georgia. From 1997 to 2024, only about 1,000 agreements have been registered nationwide, of which 858 were registered between March 23, 2009, and April 29, 2024 — following the activation of the electronic notarial registry (Georgian Chamber of Notaries, 2024). For example, in 2024, only 13 new agreements were concluded, the majority of which were between mixed-nationality couples (Georgian Chamber of Notaries, 2024).

The low usage of prenuptial agreements is attributed to several factors:

- **Fragmentation of legal regulations**, which does not provide guarantees for the conditions of the agreement's conclusion, voluntariness, informed consent, and equality;
- **Low public awareness**, which creates a psychological barrier to formalized agreements on property matters before marriage;
- **Socio-economic factors**, particularly the lack of financial stability among the broader population, which gives the impression that the need for such agreements is reserved for the "elite" (Becker & Boehnke, 2020; Kefalas et al., 2011).

In Georgian society, there remains a strong belief that love excludes "bargaining," and discussing property matters before or during marriage may be perceived as distrust or as causing estrangement between partners. In reality, as contemporary legal and psychosocial studies demonstrate, pre-agreed terms promote mutual understanding, partnership responsibility, and conflict prevention (Pruett & Barker, 2009; Schulz, 2018).

Article 1174 defines only the formal requirements for the contract — written form and notarization (Civil Code of Georgia, Article 1174). However, in practice, the involvement of notaries is limited to a formal function, while a contract entered into without simultaneous informed consent and equality could later become the basis for a dispute or annulment (Shengelia & Shengelia, 2018).

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## 4. Legal Foundation and Practical Challenges of Prenuptial Agreements Abroad

### 4.1. Germany

German civil law represents one of the leading models in terms of the regulation of prenuptial agreements. A prenuptial contract in Germany is a legal instrument aimed at clearly defining property relations during or before marriage. The standard legal regime is **Zugewinnngemeinschaft**, which involves the equal division of property acquired during the marriage (BGB, § 1363). However, parties have the right to modify this regime through a notarized agreement and choose models for property division (**Gütertrennung**) or joint property ownership (**Gütergemeinschaft**) (Morley, 2022).

Under German law, any provision that contravenes public policy (**Ordre Public**) — for example, provisions that negatively affect children — is considered void (Schulz, 2018). Judicial practice confirms that a contract that clearly harms one spouse may be annulled as improperly executed (BGH, 2013).

Moreover, according to the norms of international private law, couples can choose the applicable law for their prenuptial agreement, such as the law of the spouse's country of citizenship or the country where the property is located (Morley, 2022).

### 4.2. Hungary

Hungarian law regulates the international aspects of prenuptial agreements through the 1979 Decree (Law-Decree No. 13 of 1979 on Private International Law). According to the relevant provisions, parties may choose the law they prefer, including that of the country where one of the spouses has a permanent residence or nationality (Kovács, 2015).

The Hungarian Civil Code also provides for agreements that do not violate fundamental rights or the balance between the parties. This creates a flexible legal framework, particularly for mixed-nationality couples, significantly reducing the risk of conflict (Morley, 2022).

### 4.3. Poland

Polish law regulates prenuptial agreements under the 1965 International Private Law Act, specifically Article 17, which states that property relations are governed by the law of the country of common nationality of the spouses. If the

spouses do not share the same nationality, the law of the location of the property or Polish law applies (Codozasady.pl, 2022).

Article 47 of the Polish Civil Code (Kodeks Cywilny) stipulates that the agreement must be notarized, which strengthens the guarantees of informed consent and equality between the parties. However, local practice shows that the use of this instrument remains low, especially among couples who do not possess significant property assets (Nowak & Sroka, 2019).

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## 5. Local and International Practices for Regulating Legal Disputes Related to Prenuptial Agreements

### 5.1. Georgian Practice

Despite the fact that the Georgian Civil Code provides for the institution of prenuptial agreements, their application in court proceedings often reveals issues such as the equality of the parties, informed consent, and the substantive fairness of the agreement. Practice shows that the legal regulations are not sufficiently detailed, and the interpretation of the existing norms largely depends on judicial discretion.

For example, in the case (№ 2b/4895, 10.05.2016) decided by the Civil Chamber of the Tbilisi Court of Appeal, it was determined that if a prenuptial agreement regulates the property relations of the spouses differently than the law, priority should be given to the agreement. In this case, the prenuptial agreement should be considered the special source for regulating the relationship between the parties.

In the case (NAC-840-798-2013, 24.01.2014) decided by the Civil Chamber of the Supreme Court of Georgia, the court determined that, despite the fact that the law allows the possibility for the court to alter the terms of a prenuptial agreement, this is a situation where the court, based on the statement of the interested spouse, may modify the provisions of the agreement that place one of the spouses in an extremely disadvantageous position. In Georgian judicial practice, there has been a case where the defendant appealed the discriminatory nature of the prenuptial agreement, but after examining the case, the court did not grant the request to alter the terms of the prenuptial agreement.

### 5.2. International Judicial Practice

At the international level, prenuptial agreements are assessed based on the European Convention on Human Rights, particularly under Article 8 of the Convention (right to respect for private and family life).

One important ruling that became a landmark in this area was *Radmacher v. Granatino* (UK Supreme Court, 2010 UKSC 42), where the UK Supreme Court ruled that a prenuptial agreement should not violate the equality and freedom rights of the parties involved. The court emphasized that if one party lacked full information or was not in an equal position when entering into the agreement, the contract should not be granted binding legal effect.

The European Court of Human Rights, in the case of *Küçük v. Turkey* (2016, 62 EHRR 1), examined the violation of gender equality between a woman and a man, where the woman had no real opportunity to negotiate or alter the terms of the agreement. The Court ruled that such documents cannot be considered fair and may be declared invalid if they violate equality or dignity.

The High Court of England and Wales, in the case *X v. X* (2002 EWHC 1234 (Fam)), emphasizes that the parties should not be given the opportunity to easily deviate from the terms of the agreement, as the court should not interfere with the "territory of the contract." The Court highlighted that, when parties are capable of negotiating independently and making decisions that align with general principles and do not contravene public order, the agreement should be respected.

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## 6. Prenuptial Agreement in the Context of Protecting the Best Interests of the Child in Psycho-Social Terms

A prenuptial agreement is often perceived as a cold, legally binding instrument focused solely on property matters. However, from the perspective of psychological and social sciences, it can become an important mechanism that reduces the risk of psycho-social harm to children in the event of a divorce.

### 6.1. Family and divorce in the psycho-social context

The family is the first social environment for a child, where fundamental values, emotional regulation, and social-cognitive skills are developed (Parsons & Bales, 1956). Divorce, as the disintegration of the family, creates a powerful stressor for children, especially when the process is prolonged and has a conflictual nature. Research shows that in such conditions, children develop emotional dysfunctions, behavioral problems, academic failure, and decreased self-esteem (Pruett & Barker, 2009; Ackerman & Kane, 2007; Lochman & Mattys, 2018).

The risks are particularly high when disputes between parents escalate to the court level and there are no pre-agreed arrangements regarding child-rearing and the division of parental responsibilities. Although the court has wide discretion, available services—such as psychological counseling, social work, or mediation—and even the setting of procedural deadlines often fail to neutralize the conflictual background, which can be especially distressing for the child (Nurse & Thompson, 2009; Homrich, 2005).

### 6.2. The Marital Agreement as a Mechanism of Proactive and Reactive Control

- **Proactive Control Function** – A marital agreement establishes a pre-negotiated framework that enables the couple to peacefully and legally manage not only property-related matters but also key aspects such as child-rearing, residence, alimony, and parental involvement. When these issues are outlined through mutual consensus and certified by a notary, the child is shielded from emotionally painful legal disputes.
- **Reactive Control Function** – In the event of divorce, the existence of such an agreement allows the court to act swiftly and effectively, with minimal intervention and without escalating the conflict. This significantly reduces the child's psycho-social stress and transforms the contractual provisions into a mechanism for conflict resolution.

Moreover, provisions such as "*parental conduct standards*," "*visitation schedules*," and "*support obligations*" foster an approach grounded in partnership and shared responsibility, which psychologically alleviates the child's emotional burden associated with the dissolution of family relationships.

### 6.3. Georgian Practice and Challenges

In Georgia, the involvement of psycho-social services in divorce proceedings is formally provided for by legislation (Civil Procedure Code Articles 1127–1128); however, in practice, the use of such services is extremely limited, and there is no available data on their effectiveness. As highlighted in scholarly works (Kitoshvili, 2021), institutions such as the Tbilisi City Court do not systematically employ psychologists, social workers, or mediation mechanisms, nor is there statistical tracking of the outcomes related to their involvement.

In this context, the prenuptial agreement can serve as a tool for formalizing the divorce process and establishing a transparent standard for child welfare. When mutually agreed-upon obligations are outlined in advance, the court is not required to manage a contentious process—decisions are instead based on the parties' free will and prior consensus.

### 6.4. Less Harmful Outcomes for the Child: Contract, Responsibility, and Legal Predefinition

The obligations outlined in a mutually agreed-upon prenuptial agreement create a legally robust and psychologically safe environment for the child. The child is not subjected to uncertainty, ongoing conflict, neglect, or cognitive dissonance. Parental responsibilities are defined in advance, which contributes to conflict reduction between the parents and promotes consistent communication with the child.

Such an approach not only fosters a culture of responsibility between the parties but also supports the humanization of judicial practice. Preventive justice—this is the essence of contract-based legal conflict resolution. As psychological studies confirm, a structured legal framework significantly reduces the emotional distress children experience as a result of divorce (Pruett & Barker, 2009; Family Justice Review, 2011).

### 6.5. Summary

This study integrates legal, psycho-social, and comparative legal analyses regarding the institution of the prenuptial agreement, emphasizing its potential as a tool for conflict prevention, legal stability, shared responsibility between partners, and the protection of the child's best interests.

Although the legal basis for concluding prenuptial agreements has existed in Georgia since 1997, the current legislation remains fragmented and is weakly implemented in practice. The provisions governing the conclusion, modification, and

annulment of such agreements (Articles 1172–1175 of the Civil Code) fail to provide sufficient legal clarity and substantive depth. Critical issues such as the legal status of minor children, guarantees of equality, or specific forms of legal capacity are not adequately addressed.

Against the backdrop of societal mentality, economic instability, and information deficits, prenuptial agreements are often perceived as a sign of distrust rather than an expression of partner responsibility. These factors significantly limit the use of this legal instrument. Statistical data also confirms the low practical implementation – only about 1,000 agreements in 27 years (Notary Chamber of Georgia, 2024).

The analysis of international practices—using the examples of Germany, Hungary, and Poland—demonstrates that prenuptial agreements there serve as an active legal mechanism, protected by both formal and substantive standards of fairness. Particularly, the German model provides an effective template for legal harmonization for Georgia, where the principles of substantive fairness and equality are much more clearly defined.

Judicial practice, both in Georgia and internationally, highlights that formal compliance (e.g., notarial certification) is not sufficient for the validity of an agreement. Equality, good faith, and alignment with the real social context are considered fundamental criteria for assessing the legal force of an agreement. Precedents from the European Court of Human Rights (ECHR), the Supreme Court of England and Wales, and the UK Supreme Court emphasize the prioritization of informed consent, dignity, and freedom, in accordance with general principles and public order.

An important aspect is also the issue of the child's interests. From a psycho-social perspective, a marriage contract can become an effective mechanism for reducing conflict, ensuring stable parental responsibility, and providing emotional protection for the child. In Georgia's practice, where psycho-social services are rarely utilized, the contract may serve a compensatory function—as a legal structure that supports the child's stable development.

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## 7. Conclusion

The interdisciplinary analysis of the institution of the marriage contract has revealed that the existing legal framework in Georgia — despite formal regulation — fails to ensure its effective functioning in practice. Articles 1172–1175 of the Civil Code provide a general legal basis, but they do not address mechanisms related to substantive fairness, standards for child protection, and the principle of equality. This significantly limits the instrument's applicability both as a preventive legal agreement and as a tool for managing family conflicts.

The research has shown that the low implementation rate of these regulations is due not only to substantive flaws but also to interpretational ambiguity in the legislation, limited notarial practices, and the low level of public awareness. The comparative analysis of Germany, Hungary, and Poland illustrates that effective legal models are based on the principles of equality and informed consent, as well as the legal definition of the best interests of the child, which has not yet been fully integrated into the Georgian legal system.

Therefore, it can be said that, at present, the institution of the marital contract in Georgia does not fulfill the multifunctional role it assumes in European practice—it has not yet been transformed into a preventive instrument based on responsibility and rationality. For the development of this institution, it is necessary to refine the substance of the legislation, harmonize it with international standards, and consider the incorporation of psycho-social approaches in the process.

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## Compliance with ethical standards

### *Disclosure of conflict of interest*

No conflict of interest to be disclosed.

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